

C.W.P. No. 3777 of 2018

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 3777 of 2018

DATE OF DECISION:21.02.2018

Jaspal Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Tejinder Pal Singh, Advocate
for the petitioner.

Mr. Aditya Sharda, AAG, Punjab.

DAYA CHAUDHARY, J.

The prayer in the present petition is for setting aside impugned order dated 6.2.2018 (Annexure P-4) passed by Superintendent, District Jail, Sangrur. A further prayer has also been made for issuing directions to the respondents to grant emergency parole to the petitioner for making necessary arrangements and performing necessary ceremonies of the marriage of his son, which is scheduled for 27.2.2018 in view of provisions of Section 3 (1) (b) of the Punjab Good Conduct Prisoners (Temporary Release), Act, 1962 (hereinafter referred to as 'the Act, 1962').

The petitioner was convicted and sentenced to undergo 10 years RI for an offence punishable under Section 22 of the NDPS Act vide judgment dated 8.12.2017 passed by the Judge, Special Court, Sangrur.

petitioner has filed criminal appeal before this Court, which is pending. The marriage of son of the petitioner is fixed for 27.2.2018. A written request for release on parole was made by the petitioner to the Superintendent, District Jail, Sangrur, which has been rejected/declined vide order dated 6.2.2018 on the ground that the petitioner can apply for parole only after undergoing four months of imprisonment in view of notification of Government of Punjab dated 23.10.2003.

Learned counsel for the petitioner contends that presence of the petitioner being father is required for performing certain ceremonies of the marriage of his son. Learned counsel further contends that the conduct of the petitioner remained satisfactory inside the jail and no complaint was there. Learned counsel also contends that the case of the petitioner is squarely covered by the judgment of Division Bench of this Court in case **Gurpreet Singh Vs. State of Punjab and another** 2012 (3) RCR (Criminal) 504.

Learned counsel for respondent-State has not disputed the factum of marriage of son of the petitioner but opposed the submissions made by learned counsel for the petitioner in view of notification of Government of Punjab dated 23.10.2003. He submits that in view of said provisions, the petitioner can apply for parole only after completion of four months of imprisonment and he does not fulfil that condition and as such he is not entitled for parole.

Heard the arguments advanced by learned counsel for the parties and have also gone through the impugned order and other documents available on the file.

The facts relating to conviction and sentence are not disputed.

It is also not disputed that against the judgment of conviction and order of sentence, the petitioner has filed an appeal before this Court. Section 3 (1) (a) of the Act, 1962 is relevant in this case. It provides for temporary release of prisoners on certain grounds i.e. the prisoner is entitled for parole in case any member of prisoner's family had died or seriously ill or the prisoner himself is seriously ill. The restriction of one year of imprisonment after conviction to be eligible for temporary release has been imposed by way of Rule 4 of the Haryana Good Conduct Prisoners (Temporary Release) Rules, 2007 (hereinafter called as 'the Rules, 2007'). Said Rule was published in the Haryana Government Gazette (Extra) Legislative Supplement Part-III dated 18.12.2007. As per provisions of Section 3 (1) (b) of the Act, 1962, temporary release on parole can be granted to the prisoner for solemnization of marriage of his son or daughter, which shall not exceed four weeks. The claim of the petitioner has been declined in terms of proviso to Section 3 (2) of the Rules, 2007 which reads as under:-

“3. Procedure for temporary release. [Sections 3, 4, 10 (1), 10 (2) (b), 10 (2) (d) and 10 (2) (e)]

(1) xxxxxx

(2) The Superintendent of Jail shall forward the application along with his report to the District Magistrate, who, after consulting the Superintendent of Police of his District, shall forward the case with his recommendations to the Inspector-General. The Inspector-General will then record his views on the case whether the prisoner is to be released or not and submit the same to the Releasing Authority for orders. The District Magistrate, before making any recommendation, shall verify

the facts and grounds on which release has been requested and shall also give his opinion whether the temporary release on parole or furlough is opposed on grounds of prisoner's presence being dangerous to the Security of State or prejudicial to the maintenance of public order Provided that no such application shall be processed by the superintendent of Jail, unless the prisoners had maintained good conduct after his conviction at least for four months in jail.

(3) to (7) xxxxxx

In terms of Section 3 (2) of the Rules, the Superintendent of Jail is to forward the application of a prisoner along with the report of the District Magistrate with his recommendations to the Inspector General Prisons. The Inspector-General is then to record his views on the case as to whether the prisoner is to be released or not and submit the same to the Releasing Authority for orders; besides, verification is to be done. The proviso envisages that no application is to be processed by the Superintendent of Jail unless the prisoner has maintained good conduct after his conviction at least for four months in jail. The proviso to the Rule 3(2) of the Rules is to be limited to the subject matter of the enacting clause. It is to be read and considered as a proviso. It is not to be taken as a separate or an independent enactment.

The provisions of the Act contain a substantive right for release of prisoners on certain grounds. The marriage of the son of the petitioner is indeed where the presence of the father is required and may even be necessary. Therefore, the provisions of the substantive Act cannot be limited or curtailed by the Rules even if such provision is provided for in

the enactment providing for framing of Rules.

This Court in case of **Mahavir vs. State of Haryana** 2012 (4) RCR (Crl.) 230 has held that emergency parole can be granted to a convict to attend various situations over which he has no control i.e. death or fixation of marriage. Besides, it was held that the Rules cannot override the Act.

A Division Bench of this Court in **Gurpreet Singh vs. State of Punjab and another** 2012 (3) RCR (Criminal) 504 considered a case where immediately after the conviction of the prisoner in the said case he applied for emergency release for four weeks on account of illness of his mother who was advised operations. It was held that the prisoner was entitled to emergency release on parole under Section 3 (1) (a) of the Act. Proviso to Rule 3 (2) which provides that no application shall be processed by the Superintendent of Jail, unless the prisoner had maintained good conduct after his conviction for at least four months in jail, was held to be a procedural provision. It was directory in nature and not mandatory and the provisions of the Act are substantive provision which would prevail over the procedural provisions of the Rules.

The marriage of son of the petitioner is a solemn occasion for which the father has a pious obligation to perform certain ceremonies, which can be done by him only. Accordingly, I am of the view that Rules cannot override the provisions of the Act so as to deny the release of the petitioner for the marriage of his son. His right to be released on parole cannot be curtailed by a proviso in the Rules.

Accordingly, in view of the facts as mentioned above, the

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present petition is allowed. The petitioner is directed to be released on parole on furnishing personal and surety bonds to the satisfaction of competent authority under the Act and Rules for a period of four weeks from the date of release. The competent authority shall specify the date on which the petitioner is to surrender after his release from jail.

February 21, 2018
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes